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January 31, 2006

Sand & Gravel General Permit
Water Quality Program
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Sand and Gravel General NPDES Permit
Comments

Dear Department of Ecology:

We are writing on behalf of members of the sand and gravel industry to comment regarding Ecology's proposed revisions to the general NPDES permit for sand and gravel operations. Our comments are limited to one issue: Ecology's proposal to add Condition S6F to the general permit, which would require operators to provide their stormwater pollution prevention plans (SWPPPs) to the public upon request. This requirement improperly shifts the regulatory burden for implementing the general permit program from Ecology to the operator, and due to Ecology's failure to take responsibility for reviewing these plans, is likely to subject both Ecology and operators to frivolous claims regarding the adequacy of SWPPPs. We therefore request that Ecology delete proposed Condition S6F from the general permit or substantially modified it before issuing the final general permit.

Based on Ecology's presentation during the January 25, 2006, public hearing, it is our understanding that Ecology is relying on several federal cases to support adding Condition S6F to the sand and gravel general permit. Most notably, Ecology relies on the 9th Circuit Court of Appeals decision in *Environmental Defense Center, Inc. v. EPA*, 344 F.3d 832 (9th Cir. 2003). Condition S6F, however, does not correspond with the Court's ruling in *Environmental Defense Center*. There, the Court concluded that the EPA, in the context of the Phase II Rule for stormwater discharge from small municipal separate stormwater systems and construction sites between one and five acres in size, *must both review and make publicly available the Notices of Intent submitted for permit coverage*. *Id.* at 852-58. The Court held that the Clean Water Act placed the burden to ensure proper implementation of the permit program squarely on the shoulders of the regulating agency. While the *Environmental Defense Center* case was decided in a different context, and therefore may be of limited applicability to the sand and gravel general permit, to the extent Ecology intends to rely on it as its authority for Condition S6F, it is indefensible for Ecology to pick and choose its obligations and most notably to attempt to shift those obligations from itself to the sand and gravel operators.

First, Ecology's attempt to shift the burden for providing SWPPPs to the public to the operator is inappropriate. It would be one thing if Ecology proposed modifying the general

Department of Ecology

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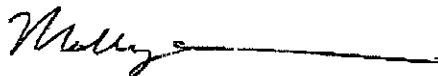
permit to require operators to provide copies of their SWPPPs to Ecology, and then Ecology could respond directly to third party requests for those plans. In the proposed modified permit, however, Ecology attempts to shift that responsibility to the operator. Condition S6F purports to make private operators subject to the State's public disclosure laws, despite the fact that those laws were never intended to apply to private citizens, but rather only government entities. Ultimately, if Ecology wants these documents to be publicly available, Ecology needs to take responsibility for doing so.

Second, and perhaps more importantly, before Ecology attempts to transform individual operators' SWPPPs into public documents, Ecology needs to take responsibility for ensuring the adequacy of those plans by reviewing and approving them. Otherwise, it is doing nothing more than setting up itself and the operators for numerous, potentially frivolous claims. Many of the SWPPP elements/requirements may be satisfied in several different ways. As a result, it is our clients' experience that one operator's SWPPP is likely to differ significantly in appearance and content from another's. Without Ecology review and approval, even non-substantive differences could result in litigation in which third parties assert not so much that a particular SWPPP does not meet the performance standards established in the permit, but that the operator could do so differently or better. This result is inappropriate and overburdensome on the operator.

Rather than responding directly to public requests, our clients would prefer that Ecology collect each operator's SWPPP and review those SWPPPs for consistency with the established performance standards before making them publicly available. By establishing procedures and protocols for such reviews, Ecology could substantially insulate both itself and operators from frivolous claims and public "fishing expeditions." As proposed, however, Ecology intends to take no responsibility for the proper operation of the sand and gravel permit and instead put the operators at the mercy of public interrogation. Unquestionably, public participation has proven valuable in maintaining the proper functioning of the general permit program. But Ecology should accept its responsibility as the first line in ensuring that SWPPPs meet established standards. Only after that review is completed and Ecology has done its job should operators be expected to accept that those plans are public documents.

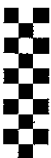
Thank you in advance for your consideration. For the reasons set forth herein, we request that Ecology remove Condition S6F from the proposed modified sand and gravel general permit and/or substantially modify the Condition to make Ecology, not the operators, responsible for the adequacy of SWPPPs and their public availability. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



Molly A. Lawrence

MAL:MAL



January 31, 2006

RE: Comments for Proposed Sand and Gravel Permit Regulations

In Section 7, Water Management

This section should include regulations and address issues relating Pit to Pier Operations. These permit regulations should prohibit the direct discharge of any process waters derived from the conveyor belt system that originated at the sand and gravel pits to the pier and loading the material on to barges. If any process waters are discharged into Hood Canal or Puget Sound the effluent should meet Water Quality Standards. In reviewing the proposed regulations I see that this operational method of transporting sand and gravel to barges for transportation to out of state markets are not covered in WDOE proposed guidelines.

My example is Fred Hills proposed project in Jefferson County to transport sand and gravel 5 miles, descend down a ravine, out a long pier to be flumed into barges. This type of operation should adhere to the proposed Sand and Gravel Storm Water regulations. Thanks.

Larry Petersen
184 Groves Way
Pt. Ludlow, WA 98365

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January 31, 2006

VIA EMAIL – SandandGravel_Comments@ecy.wa.gov

Sand & Gravel Permit
Water Quality Program
State of Washington Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Comments on 2006 Sand & Gravel General Permit Modification.

Dear Department of Ecology:

This letter is submitted on behalf of the Washington Aggregate and Concrete Association (WACA) to comment on the proposed modifications to the Sand & Gravel General Permit. WACA appreciates the prompt efforts by the Department of Ecology to implement the settlement of the 2005 permit appeals and this opportunity to comment on the modifications. These comments are limited to the sampling frequency for pH in Special Condition S2 and public access to stormwater pollution prevention plans in Special Condition S6.F.

A. Ecology has not provided an adequate basis for increasing the frequency for pH monitoring for type 3 stormwater at concrete manufacturing facilities.

In accordance with the October 21, 2005, Stipulation and Agreed Order of Dismissal in PCHB Nos. 05-016 and 05-017, Ecology agreed to provide some justification in the permit modification fact sheet for increasing the frequency of monitoring for type 3 stormwater at concrete manufacturing facilities operating under SIC codes 3272 and 3273. The explanation provided in the fact sheet is not satisfactory to WACA and substantiates the view of the Association that the increase in monitoring frequency is arbitrary, capricious, and is not based on substantial evidence.

As an initial matter, Ecology has not appropriately distinguished the difference between process waste water from manufacturing concrete products and surface water runoff from areas outside of a facility. There is no citation to authority or evidence that would substantiate the assertion that water quality would be similar for process water and unrelated stormwater. There is simply no justification for assuming that type 3 stormwater from areas of a facility separate from process operations should be similar to or pose the same risk of pH release as process water.

It also appears the primary justification for the increased monitoring frequency is the reduction of monitoring at facilities operating under other SIC codes covered by the general permit. WACA does not understand how the reduction in frequency at some facilities provides substantial evidence to support increasing the frequency of monitoring at other facilities.

Another justification stated in the fact sheet is the statement that industrial stormwater can be more variable in terms of volume and concentration than process waste water. Missing from this analysis is any logical link as to how that statement compels increased monitoring frequency. The evidence before the Department indicates that in the last permit cycle 95.2% of all pH samples reported to Ecology were in compliance with permit limits. (2005 Fact Sheet, 8.) This fact raises several questions:

1. If the same rate of compliance applies to concrete manufacturers, how does Ecology justify the increase in monitoring frequency?
2. Ecology reduced the frequency of monitoring for SIC 1442 facilities based on monitoring results from the past permit cycle; why does Ecology not apply the same standard to concrete manufacturers?
3. If a particular facility has maintained regular compliance with the pH limits in the past permit cycle, why should it be subject to increased monitoring in the new permit?
4. For those facilities that have maintained compliance with the pH limits in the past permit cycle, what information does Ecology have as to the implementation and maintenance of best management practices to suggest that more frequent monitoring is necessary?
5. What evidence or information does Ecology have as to cost and burden of increased monitoring?
6. What specific information does Ecology have as to the sampling results for type 3 stormwater at concrete manufacturing facilities during the last permit cycle?
7. What specific information did Ecology rely on in concluding that type 3 stormwater at concrete manufacturing facilities pose an increase risk of pH discharges than other facilities covered under the permit?

B. Ecology should not include a provision in the permit compelling a covered facility to respond to a public records request.

WACA requests that Ecology delete the additional language in Special Condition S6.F allowing public access to stormwater pollution prevention plans (SWPPP). At the very least, the Department should clarify the obligations created by this section and the confusion created by the permit modification fact sheet.

The fact sheet erroneously states that a copy of a SWPPP must be provided to the public when requested in writing. Contrary to this statement, a permitted facility may elect to direct any public request to the Department of Ecology. This misrepresentation in the fact sheet perpetuates a substantial potential for abuse and confusion. It is

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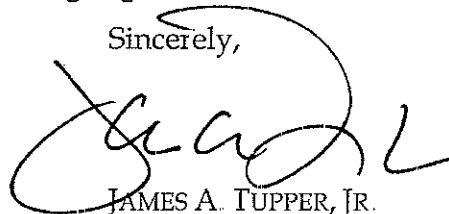
extremely dangerous to suggest that the terms of the permit allow direct public access to an industrial facility. The permit and fact sheet should make clear that this is not the case to anyone who might want to review a SWPPP.

WACA has the following specific questions regarding this condition:

1. What is the legal basis for compelling a private party to respond to a public request for a SWPPP?
2. Is Ecology relying on a particular provision of the Clean Water Act or its implementing regulations to require a private party to respond to a public records request?
3. Is Ecology relying on a particular provision of the state Water Pollution Control Act or its implementing regulations to require a private party to respond to a public records request?
4. Is Ecology relying on a particular provision in the state Public Disclosure Act that allows it to require a private party to respond to a public records request?
5. How will Ecology determine if the public has made an appropriate written request for a copy of the SWPPP?
6. Do public requests for a SWPPP have to be directed to a managing agent, corporate officer, registered agent, the contact person identified in a permit application, or a duly authorized representative under General Condition G20? How will Ecology advise the public as to who should be contacted to request a SWPPP?
7. Why does the permit fail to include some provision to advise facilities that they have a right to claim confidentiality to business records under RCW 42.17.310 and provide some procedure to address a claim of confidentiality? If a facility claims confidentiality over any portion of its SWPPP, will it have to have that claim resolved by Ecology before withholding the SWPPP?
8. What education efforts will Ecology undertake to advise members of the public that they should not seek to enter an industrial facility without permission?

We again appreciate the opportunity to comment of the draft modification and your consideration of the foregoing comments.

Sincerely,



JAMES A. TUPPER, JR.

CC: Bruce Chattin

SAND & GRAVEL GENERAL PERMIT MODIFICATION HEARING - 1/25/2006

Let the record show that it is 2:51 pm on January 25, 2006, and this public hearing is being held at the Ecology HQ building, 300 Desmond Dr, Lacey, WA in auditorium room 32. The primary purpose of this hearing is to receive comments on the proposed modification of the Sand & Gravel General Permit. The legal notice of this permit, excuse me, the legal notice of this hearing was published in the WA State register, issue #05-24-123 on Dec. 21, 2005.

Approximately 700 permit holders & other interested parties were directly mailed notice of the public hearing. In addition, Ecology mailed out a press release statewide to media outlets informing them of the public hearing. Since this is a permit modification, Ecology will only be accepting & responding to comments that concern to the proposed modification changes. Ok, at this point & time, the sign-in sheets indicated no one wanted to provide testimony, but we do have a gentleman who has changed his mind, so if you would please come up, state your name & address for the record, and please begin your testimony sir.

My name is Christopher Ott. I work for the city of Tacoma, WA. The business address is 2324 So. C Street, Tacoma, WA 98402, and my comment has to do with special condition #S10D, regarding erosion & sediment control inspections, in which it says that the annual inspection may be done by a certified professional erosion & sediment control, and my comment is that if I'm correct, the Western WA Stormwater Manual allows for a certification as a certified erosion & sediment control lead, as opposed to the certified professional in erosion & sediment control, which, again if I'm not mistaken, is only available through a private company, that tests for that certification, that they are happy to take \$50 a year to renew. That's my comment.

OK, thank you. Ok, does anyone else have any comments or questions that they would like addressed, as part of the public record? No? Ok. All of the testimony that we just received at the hearing, as well as any written comments that we will be receiving are part of the official record of this proposal, and as Bill had mentioned earlier, they will receive equal weight in the decision making process. The public comment period ends on January 31, 2006. Over there on the table is the public hearing notice Sand & Gravel Permit & on that are some addresses. Written comments must be received by 5:00 pm on January 31. Please submit your written comments, and the addresses are here, but I will also read them off, too. Sand & Gravel General Permit modification, Water Quality Program, Dept. of Ecology, PO Box 47600, Olympia, WA 98504-7600. You may also submit comments by email to, and this is all one word, sandandgravel_comments@ecy.wa.gov. You may also send comments via the fax to area code 360 407-6426, and please if you use the fax, be very very careful when you put that number in, because my phone number is one digit off and sometimes I get some really interesting blurps & bleeps that come through, and got folks talking. All of the oral & written comments received are going to be put in a document called the response to comments summary, and as I said earlier, that document will state Ecology's official position on the concerns that were raised during the public comment period. This document will automatically be mailed out to everyone who provided oral or written testimony. It's my understanding that it will also be put on the web page once it has been complete. Ecology is expecting to issue the permit by March 31, 2006. The response to comments summary will be mailed along with a copy of the modified permit. If

Ecology believes that the comments received, either in writing or any oral testimony that we've received could substantially change the scope or conditions within the original draft permit, then another public notice of draft & comment period may be necessary which could result in a delay in issuing the permit coverage. The ultimate decision to issue the permit will be made by the Water Quality Program Manager, who is Dave Peeler. On behalf of the Dept. of Ecology, thank you for coming to our very short public hearing. We appreciate your time and comments. This hearing is adjourned at 3:56. Thank you.

Carolyn - Rile Pickett
 4322 E. 12th Ave
 Spokane, WA 99212
 January 11, 2006
 January 20, 2006
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SAND & GRAVEL GENERAL PERMIT
 WATER QUALITY PROGRAM
 WASHINGTON STATE DEPARTMENT OF ECOLOGY
 PO BOX 47600
 OLYMPIA, WA 98504-7600
 FAX (360) 407-6426
 E-MAIL

SAND AND GRAVEL COMMENTS @ ECY.WA.GOV.
 PLEASE PRESENT AT HEARING / SPOKANE RESIDENTS
 COUNTY

DAVID C. PEELER, MANAGER
 WATER QUALITY PROGRAM
 WASHINGTON STATE DEPARTMENT OF ECOLOGY

WHEREAS: THE GROUND WATER OF THE
 STATE WASHINGTON IS THE MOST NECESSARY
NATURAL SOLVENT REQUIRED BY
 FLORA AND FAUNA - EVENTUALLY
 IS ENTERED INTO FOOD CHAIN, AND
 AQUIFERA - HUMANS OBTAIN THE
 SOLVENT REQUIRED FOR NUTRITION
 and Food Chain Sources --

WHEREAS: THE PH FACTOR IS MOST IMPORTANT
 IN HEALTHY WATER SOURCES MAINTAINING
 THE NATURAL BALANCE OF WATER QUALITY.

WHEREAS:
 WITH ALL DUE RESPECT
 THE REQUEST IN THE APPEAL TO LOWER
 PH TESTING AND MONITORING
 FROM READY-MIX CONCRETE PRODUCTS
 FACILITIES AND OTHER SIC (Business)

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Hand written

IS UNREASONABLE AND SHOWS THE
INCONSISTENT EFFORTS OF BUSINESS'S
THAT OPERATE FACILITIES WHICH HAVE
TOXIC INGREDIENTS OFTEN OVER LOOKED TO
PROVIDE SINCERE PROTECTION MONITORING.

WHEREAS MONITORING IN REALITY SHOULD
BE DONE DAILY AND FOR THERE TO
BE A DISPUTE AND APPEAL OF THE PERMIT
THE PROTECTION OF GROUNDWATER
FURTHER ABUSES THE SOVEREIGNTY,
RELYING ON THE EPA'S RESPONSIBILITIES
AND

FURTHER CALLS ATTENTION TO THE
NEED FOR STRINGENT ENFORCEMENT
OF REQUIRING THE PERMIT TO INCLUDE
EFFLUENT LIMITATIONS "MORE SUFFICIENT"
TO ENSURE THAT DISCHARGES DO NOT
CAUSE OR CONTRIBUTE TO VIOLATIONS
OF WATER QUALITY STANDARDS!

WHEREAS (ONCE OBTAINED THERE IS NO EXCUSE FOR NOT USING
PH TESTING EQUIPMENT, AND OTHER
SAFEGUARDS, OF STATE WATER (LISTED
AND EVEN THOSE UNLISTED) WHICH MAY
BE VIOLATED DUE TO LACK OF COMPLIANCE
AND TOTAL MAXIMUM DAILY LOADS —

WITH ALL DUE RESPECT
WHEREAS: THE PERMIT REQUIREMENT ONLY APPEAR
UNREASONABLE OR INCONSISTENT TO "PERSONS"
UNWILLING TO EMPLOY SOUND PRACTICES AND
ARE IGNORANT OF THE LIFE CYCLE OF WATER,
FLORA, FAUNA — ALL CREATION THAT REQUIRE
SAFE, CLEAN WATER!

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P. R. Pichett

WITH ALL DUE RESPECT
WHEREAS, THE CONSTANT EFFORT TO
TO LOWER THE RESPONSIBLE TESTING REQUIREMENTS
AND LAWS OF ENVIRONMENTAL PROTECTION
WHILE PRESENTED BY SOME AS MAKING
IT BETTER FOR "BUSINESS PEOPLE"
BECAUSE THE LAWS ARE TOO MANY etc —
IN REALITY IS AN EFFORT TO BE
SLOPPY HOUSE / EARTH STEWARDS —
AND RESULTS IN CONSTANT HARM TO
ALL LIVING CREATURES!

AND MUST BE SEEN AS IT IS —
STOP ARGUING AND PLAYING WORD
GAMES — SPEND YOUR TIME PROTECTING
THE ENVIRONMENT — ABIDE BY THE
REQUIREMENTS DESIGNED TO ENSURE
WATER QUALITY OF WASHINGTON STATE
IS PROTECTED FROM FURTHER DEGRAD-
ATION.

WHEREAS MANY PEOPLE READ AND GAVE WRITTEN
TESTIMONY REGARDING THE SAND AND
GRAVEL PERMIT REQUIREMENTS, AND
THE EFFORT TO LOWER STANDARDS HAS
BECOME "FANTASTIC" ABUSE OF THE SOVEREIGNTY
RELYING ON THE PROTECTION OF THE GROUND WATERS
FURTHER WE HAVE SEEN THE TACTICS
OF ABUSING THE AQUIFER^{AREAS} AND USE
OF QUESTIONABLE "MATERIALS" IN CONCRETE
FORMULAS —

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WHEREAS "WITH ALL DUE RESPECT STOP!!"
 "PAPER PUSHING," AND MAKE
 IT POSSIBLE FOR ~~EMA~~ EMPLOYEES
 TO PROTECT THE GROUND WATERS
 BY USING THEM TO "ENTER
AND INSPECT DURING REASONABLE
TIMES!

FURTHER DO NOT LEAVE THE
TESTING TO BE DONE BY THE
FOX IN THE HEN HOUSE METHOD!

WHEREAS: ^{WITH ALL DUE RESPECT} WHAT IS CLASSIFIED REASONABLE
 TIMES" IS QUESTIONABLE DUE TO
 THE OBVIOUS EFFORT OF THOSE
 "WHO WOULD APPEAL" PROTECTIVE
 REQUIREMENTS — FOR SUCH A NECESSARY
 RESOURCE AS GROUNDWATER.

BE IT RESOLVED THAT THE APPEALS
 AND LOWERING/CONSIDERING THE PERMIT
 REQUIREMENTS AS UNREASONABLE OR INCONSISTENT
 SHOWS INTENT TO ABUSE THE ENVIRONMENT AND
 MORE STRINGENT "ENFORCEMENT, DAILY PH
 MONITORING SHALL BE REQUIRED!

FURTHER TABLE INDEFINITELY ~~THE~~ EFFORT
 TO UNDERMINE ENVIRONMENTAL PROTECTION
 REQUIREMENT FOR WATER (GROUND OR OTHER SOURCES)

File 2 Respectfully Submitted in Good Faith
R. L. D. D. + Carolyn Ruth Pickett